

AMENDED IN ASSEMBLY SEPTEMBER 10, 2003

AMENDED IN ASSEMBLY APRIL 23, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1388

Introduced by Assembly Member Kehoe

February 21, 2003

An act to amend Section 144 of, and to add Chapter 10.5 (commencing with Section 4600) to Division 2 of, the Business and Professions Code, *and to repeal Chapter 6 (commencing with Section 51030) of Part 1 of Division 1 of Title 5 of the Government Code*, relating to massage therapy, *and making an appropriation therefor*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1388, as amended, Kehoe. ~~Massage therapy and bodywork licensure.~~

Existing law provides for the regulation of various healing arts professionals, including physicians and surgeons, dentists, chiropractors, and acupuncturists. Existing law requires applicants for licensure or registration by various boards, bureaus, commissions, and divisions to submit fingerprints for the purpose of conducting criminal history record checks. *Existing law authorizes the legislative body of a city or county to enact ordinances providing for the licensing and regulation of the business of massage when carried on within the city or county.*

This bill would *repeal those provisions authorizing a city or county to license and regulate the business of massage. The bill would instead establish the Board of Massage Therapy and Bodyworks Commission*

in the Department of Consumer Affairs to license and regulate massage therapists and bodyworkers, as defined and massage practitioners, as defined. The bill would specify the composition, powers, and duties of the ~~commission~~ board. *The bill would create the Massage Therapy Fund and would require all fees collected by the board to be paid into the State Treasury to be credited to the fund. The bill would make money in the fund available to the board for specified purposes upon appropriation by the Legislature, except that the bill would appropriate all money in the fund to the board in the 2005-06 fiscal year for the purpose of implementing the bill.* The bill would prohibit a person from using certain titles without being licensed, and would *make it a crime to violate that prohibition.* The bill would specify requirements for licensure, including requiring the submission of fingerprints to conduct a criminal history record check. ~~The bill would also authorize a physical therapist to perform activities in their scope of practice even if the activities extend into the field of chiropractic science.~~ The bill would authorize the ~~commission~~ board to issue citations, administrative fines, and suspensions for a violation of the laws regulating massage therapists and bodyworkers. The bill would require the ~~commission~~ board to submit fingerprint images from applicants for licensure to the Department of Justice. The bill would require the Department of Justice to provide certain criminal record information obtained from the fingerprint images to the ~~commission~~ board and to charge a fee to cover the cost of processing this information. The bill would exempt certain unlicensed persons from the prohibitions against engaging in massage therapy or bodywork. *The bill would preempt local ordinances regulating massage by persons licensed under the bill.*

Because a violation of this bill's requirements with respect to practicing massage therapy, or representing oneself as a licensed massage therapist, without a license would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.



The people of the State of California do enact as follows:

SECTION 1. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following boards or committees:

- (1) California Board of Accountancy.
- (2) State Athletic Commission.
- (3) Board of Behavioral Sciences.
- (4) Court Reporters Board of California.
- (5) State Board of Guide Dogs for the Blind.
- (6) California State Board of Pharmacy.
- (7) Board of Registered Nursing.
- (8) Veterinary Medical Board.
- (9) Registered Veterinary Technician Committee.
- (10) Board of Vocational Nursing and Psychiatric Technicians.
- (11) Respiratory Care Board of California.
- (12) Hearing Aid Dispensers Advisory Commission.
- (13) Physical Therapy Board of California.
- (14) Physician Assistant Committee of the Medical Board of California.
- (15) Speech-Language Pathology and Audiology Board.
- (16) Medical Board of California.
- (17) State Board of Optometry.
- (18) Acupuncture Board.
- (19) Cemetery and Funeral Bureau.
- (20) Bureau of Security and Investigative Services.
- (21) Division of Investigation.
- (22) Board of Psychology.
- (23) The California Board of Occupational Therapy.
- (24) ~~The Board of Massage Therapy and Bodyworks Commission.~~

SEC. 2. Chapter 10.5 (commencing with Section 4600) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 10.5. MESSAGE THERAPISTS

~~4600.—The Massage Therapy and Bodyworks Commission is hereby created in the Department of Consumer Affairs.~~

~~(a) The commission shall consist of seven members, appointed for four year terms, who are registered massage therapists or bodyworkers and who have engaged in the practice of massage therapy or bodywork for at least two years preceding appointment.~~

~~(b) The Governor shall appoint five members, the Senate Rules Committee shall appoint one member, and the Speaker of the Assembly shall appoint one member.~~

~~(c) Three members of the commission shall represent the two massage therapy or bodywork professional organizations that have a code of ethics and requirements for continuing education and that combined represent the majority of California massage therapists and bodyworkers. Two members shall represent massage therapy or bodywork schools in California. The remaining two members shall represent the public served under this chapter.~~

~~(d) The members of the board shall serve without compensation. A member shall be reimbursed for his or her actual expenses arising out of his or her service on the board.~~

~~4601.—The commission may charge an application fee for registration of not more than _____ dollars (\$_____) and may charge a registration fee of not more than _____ dollars (\$_____).~~

~~4602.—For purposes of this section, the following terms shall have the following meanings:~~

~~(a) “Bodyworker” means a person who engages in bodywork.~~

~~(b) “Massage therapist” means a person who engages in massage therapy.~~

~~(c) “Massage therapy” and “bodywork” mean the science and healing art that uses manual actions to palpate and manipulate the soft tissue of the human body, and includes determining whether massage therapy or bodywork is appropriate or contraindicated, or whether referral to another health care practitioner is appropriate.~~

~~4603.—This chapter does not apply to a person holding a license, permit, registration or certification granted by this state or~~

1 the federal government, who engages in the practice of massage
2 therapy or bodywork within the scope of his or her license, permit,
3 registration or certification, and who does not use a title or
4 description that implies that he or she is registered under this
5 chapter or represent himself or herself to be registered under this
6 chapter.

7 4603.1. The following practitioners are exempt from the
8 provisions of this chapter.

9 (a) Reflexologists who restrict their manipulation of the soft
10 tissues of the human body to the hands, feet, or ears and do not hold
11 themselves out to be a massage therapist or do massage therapy.

12 (b) Practitioners of Feldenkrais Method, the Trager Approach,
13 the Alexander Technique, and Body-Mind Centering practitioners
14 who are engaged in a profession with established standards and
15 ethics, if their services are not designated or implied to be massage
16 or massage therapy.

17 (c) Practitioners of polarity and energy therapy who are
18 engaged in a profession with established standards and ethics in
19 which their services are not designated or implied to be massage
20 or massage therapy.

21 4604. A person shall not perform services regulated by this
22 chapter or represent himself or herself to be registered under this
23 chapter, nor shall he or she use any of the following titles, unless
24 the person is registered as a massage therapist or bodyworker
25 pursuant to this chapter:

26 (a) California registered massage therapist and bodyworker.

27 (b) California registered massage therapist.

28 (c) California registered bodyworker.

29 (d) Registered massage therapist and bodyworker.

30 (e) Registered massage therapist.

31 (f) Registered bodyworker.

32 (g) Any title or description that implies that he or she is
33 registered under this chapter.

34 4605. The commission may promulgate regulations
35 establishing requirements and standards for the practice of
36 massage therapy or bodywork by a registrant, including a code of
37 ethics that governs a registrant's practice of massage therapy or
38 bodywork.

39 4606. The massage therapy and bodywork commission may
40 promulgate regulations establishing the education, training, and

1 competency requirements that an applicant for registration shall
2 satisfy in order to be registered under this chapter.

3 (a) ~~The regulations shall at a minimum do the following:~~

4 (1) ~~Require an applicant to complete at least _____ classroom~~
5 ~~hours of study in a course of instruction in massage therapy or~~
6 ~~bodywork approved by the commission or at a school approved by~~
7 ~~the commission.~~

8 (2) ~~Require an applicant whose application is received after~~
9 ~~March 1, 2005, to successfully complete any of the following:~~

10 (A) ~~The national certification examination for therapeutic~~
11 ~~massage and bodywork that is offered by the National~~
12 ~~Certification Board for Therapeutic Massage and Bodywork.~~

13 (B) ~~A substantially equivalent examination relating to the~~
14 ~~practice of massage therapy or bodywork that is approved by the~~
15 ~~National Commission of Certifying Agencies of the National~~
16 ~~Organization for Competency Assurance.~~

17 (C) ~~An examination relating to the practice of massage therapy~~
18 ~~or bodywork that is developed, administered, or approved by the~~
19 ~~commission. The commission may authorize a massage therapy or~~
20 ~~bodywork school approved by the commission to administer the~~
21 ~~examination as part of the school's coursework.~~

22 (3) ~~Require an applicant to provide documented evidence of~~
23 ~~completion of hours of massage therapy or bodywork experience.~~

24 (4) ~~Allow for licensure in California if the applicant is~~
25 ~~registered, licensed, or certified in another state that has~~
26 ~~substantially similar requirements for massage therapy and~~
27 ~~bodywork.~~

28 (b) ~~The regulations may require an applicant to pass an~~
29 ~~examination on state law and administrative rules governing~~
30 ~~massage therapy or bodywork.~~

31 (c) ~~The regulations may provide for multiple levels of massage~~
32 ~~therapy or bodywork services that may be provided under this~~
33 ~~chapter and may provide for different requirements for each level.~~
34 ~~The regulations shall recognize increased or specialized~~
35 ~~education, skill level, and experience.~~

36 4607. (a) ~~The commission shall license as a massage~~
37 ~~therapist or bodyworker a person who does all of the following:~~

38 (1) ~~Meets education and experience qualifications established~~
39 ~~by the commission.~~

40 (2) ~~Passes an examination approved by the commission.~~

1 ~~(3) Pays the appropriate application and a license fees.~~

2 ~~(b) The commission may deny licensure if any of the following~~
3 ~~apply:~~

4 ~~(1) The person is currently under investigation for a matter~~
5 ~~related to his or her practice of massage therapy or bodywork in~~
6 ~~another state, territory, or country.~~

7 ~~(2) The person has been disciplined for a matter related to his~~
8 ~~or her practice of massage therapy or bodywork in another state,~~
9 ~~territory, or country.~~

10 ~~(3) The person is currently a party in pending litigation in~~
11 ~~which it is alleged that he or she is liable for damages for acts~~
12 ~~committed in the course of the practice of massage therapy or~~
13 ~~bodywork.~~

14 ~~(4) The person has been found liable for damages for acts~~
15 ~~committed in the course of the practice of massage therapy or~~
16 ~~bodywork that evidence a lack of ability or fitness to practice~~
17 ~~massage therapy or bodywork.~~

18 ~~(5) The person has been convicted of an offense the~~
19 ~~circumstances of which substantially relate to the practice of~~
20 ~~massage therapy or bodywork.~~

21 ~~(c) (1) The commission may issue a citation and an~~
22 ~~administrative fine of up to five thousand dollars (\$5,000) or~~
23 ~~suspend a license for any violation of this chapter or any regulation~~
24 ~~adopted under this chapter.~~

25 ~~(2) The commission shall suspend or revoke a license for any~~
26 ~~knowing and intentional violation of this chapter or any regulation~~
27 ~~adopted under this chapter.~~

28 ~~4608. Upon application and payment of the appropriate~~
29 ~~application and registration fees, the commission may register as~~
30 ~~a massage therapist or bodyworker a person who has been issued~~
31 ~~a similar license, registration, or certificate by another state or~~
32 ~~territory of the United States or another country.~~

33 ~~4609. Except as provided in subdivision (b) of Section 4607,~~
34 ~~the following persons shall be deemed to meet the requirements of~~
35 ~~subdivision (a) of Section 4607 if an application is received by~~
36 ~~April 1, 2005, and payment of fees required under Section 4601~~
37 ~~are made:~~

38 ~~(a) A person who is licensed by a local government agency to~~
39 ~~practice massage therapy or bodywork prior to January 1, 2005.~~

~~(b) A person who is not required to be licensed by a local government agency to practice massage therapy or bodywork prior to January 1, 2005, but can demonstrate _____ hours of massage therapy or bodywork experience.~~

~~4610. No local government agency may restrict the practice of massage therapy or bodywork. This chapter shall preempt local ordinance regulation of the practice of massage therapy as set forth in this chapter.~~

~~4611. A student of a massage therapy or bodywork school approved by the commission may provide massage therapy or bodywork as required by the school to complete coursework if the student receives no financial remuneration for providing the massage therapy or bodywork.~~

~~4612. (a) The commission shall submit fingerprint images and related information to the Department of Justice of applicants for licensure for the purpose of obtaining information as to the existence and nature of a record of state and federal level convictions and state and federal level arrests for which the Department of Justice establishes that the applicant was released on bail or on his or her own recognizance pending trial. Requests for federal level criminal offender record information received by the Department of Justice pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the Department of Justice.~~

~~(b) Pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code, the Department of Justice shall provide the following information to the commission:~~

~~(1) Every conviction rendered against the applicant.~~

~~(2) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.~~

~~(c) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request for state and federal level criminal offender record information.~~

~~(d) Fingerprint images and related information submitted pursuant to this section include fingerprint images and related information transmitted electronically.~~

~~(e) The commission shall request subsequent arrest notification service from the Department of Justice, as provided under Section~~

~~11105.2 of the Penal Code, for all applicants for licensure for which fingerprint images and related information are submitted to conduct a search for state and federal level criminal offender record information.~~

4600. *The Legislature finds and declares that the public interest is served through licensure of massage therapists and massage practitioners, and that the health and welfare of citizens of California will be protected by identifying to the public those individuals who are qualified to call themselves massage therapists. The Legislature finds that the public interest is better served through having a central agency to license and regulate the massage profession than is possible through a patchwork of local regulations. This chapter establishes minimum qualifications for entry into the profession and effective discipline for practitioners who violate the law.*

4601. *As used in this chapter, the following terms shall have the following meaning:*

(a) *“Massage” means the application of a system of structured touch, pressure, movement, and holding to the soft tissues of the human body with the intent to enhance or restore the health and well-being of the client. The practice includes the external application of water, heat, cold, lubricants, salt scrubs, or other topical preparations; use of devices that mimic or enhance the actions of the hands; and determination of whether massage therapy is appropriate or contraindicated, or whether referral to another health care practitioner is appropriate. For purposes of this chapter, massage and bodywork are interchangeable.*

(b) *“Massage Therapist,” “Bodyworker,” “Bodywork Therapist,” or “Massage and Bodywork Therapist” means a person who is licensed by the Board of Massage Therapy under subdivision (c) of Section 4604 and administers massage for compensation.*

(c) *“Massage Practitioner,” “Bodywork Practitioner,” or “Massage and Bodywork Practitioner” means a person who is licensed by the Board of Massage Therapy under subdivision (b) of Section 4604 and administers massage for compensation.*

(d) *“Board” means the Board of Massage Therapy within the Department of Consumer Affairs.*

1 (e) “*Massage Therapy Fund*” means a fund set up by the board
2 to accept and disburse fees paid by licensees for the purpose of
3 administering the provisions of this chapter.

4 (f) “*Compensation*” means the payments, loan, advance,
5 donation, contribution, deposit or gift of money or anything of
6 value.

7 (g) “*Registered school*” means a facility that meets minimum
8 standards for training and curriculum in massage and related
9 subjects as determined by this chapter and that is certified by the
10 Board For Private Postsecondary And Vocational Education,
11 Department of Education pursuant to Section 94931 of the
12 Education Code, or a school of equal or greater training that is
13 approved by the corresponding agency in another state.

14 (h) “*Approved massage school*” means a facility that meets
15 minimum standards for training and curriculum in massage and
16 related subjects as determined by this chapter and that is approved
17 by the Board For Private Postsecondary And Vocational
18 Education, Department of Education pursuant to Section 94915 of
19 the Education Code, or a school of equal or greater training that
20 is approved by the corresponding agency in another state, or
21 accredited by an agency recognized by the United States
22 Department of Education.

23 (i) “*Person*” means an individual, partnership,
24 unincorporated organization, or corporation.

25 4602. (a) The Board of Massage Therapy is hereby created in
26 the Department of Consumer Affairs.

27 (b) The board shall be composed of seven members who are
28 residents of California, as follows:

29 (1) Five professional members currently licensed with at least
30 three years of consecutive, recent experience in the practice of
31 massage or massage therapy. Professional members shall
32 represent both massage practitioners and massage therapists. A
33 maximum of two members can be individuals who also own or
34 direct massage therapy schools.

35 (2) Two public members who are not and have never been
36 licensed under this chapter, are not in training to become massage
37 practitioners or massage therapists, are not the spouse of a person
38 so licensed, are not related to or share a household with someone
39 so licensed, have not had within two years of the appointment a
40 substantial financial interest in a licensee regulated by the board,

1 *and otherwise have no financial interest, directly or indirectly, in*
2 *the profession. One public member may hold a license in another*
3 *health care profession.*

4 *(c) If the board membership includes no other person licensed*
5 *as a health care professional or no representative of massage*
6 *therapy training programs, the board may appoint advisors.*

7 *(d) All members shall be appointed for a term of three years.*
8 *The Governor shall appoint five members, the Senate Committee*
9 *on Rules shall appoint one member, and the Speaker of the*
10 *Assembly shall appoint one member. Initial appointments to the*
11 *board shall be made from those eligible for licensing under Section*
12 *4603. Initial appointments shall be made as follows:*

13 *(1) The Governor shall appoint two board members for a term*
14 *of one year; two board members for a term of two years, and one*
15 *board member for a term of three years. Initial appointments by the*
16 *Senate Committee on Rules and Speaker of the Assembly shall be*
17 *for three years.*

18 *(2) Appointments made thereafter shall be for three-year terms,*
19 *but no person may be appointed to serve more than two*
20 *consecutive terms. Terms shall begin on the first day of the*
21 *calendar year and end on the last day of the calendar year or until*
22 *successors are appointed, except for the first appointed members*
23 *who shall serve through the last calendar day of the year in which*
24 *they are appointed, before commencing the terms prescribed by*
25 *this section.*

26 *(3) Vacancies shall be filled by appointment for the unexpired*
27 *term.*

28 *(e) Each member shall serve until his or her successor is*
29 *appointed and qualified, unless the member is no longer*
30 *competently performing the duties of office. Any vacancy on the*
31 *board shall be filled by the Governor for the balance of the*
32 *unexpired term. The Governor may remove members of the board*
33 *from office for neglect of any duty imposed by state law, for*
34 *incompetence, or for unprofessional or dishonorable conduct.*

35 *(f) Members of the board shall receive no compensation for*
36 *their services but shall be entitled to reasonable travel and other*
37 *expenses incurred in the execution of their powers and duties in*
38 *accordance with Section 103.*

39 *(g) The members of the board shall annually elect officers in*
40 *accordance with rules established by the board.*

1 (h) *The board shall meet as frequently as shall be reasonably*
2 *necessary to implement the provisions of this act, but not less than*
3 *twice a year. The board may convene from time to time until its*
4 *business is concluded. Special meetings of the board may be held*
5 *at any time and place designated by the board.*

6 (i) *Notice of each meeting of the board shall be given in*
7 *accordance with the Bagley-Keene Open Meeting Act (Article 9*
8 *commencing with Section 11120) of Chapter 1 of Part 1 of*
9 *Division 3 of Title 2 of the Government Code). Four members of*
10 *the board shall constitute a quorum for the purpose of transacting*
11 *board business.*

12 4602.10. *The board shall have the following powers and*
13 *duties:*

14 (a) *Administer, coordinate, and enforce the provisions of this*
15 *chapter, and evaluate the qualifications of applicants for licensing*
16 *under this chapter.*

17 (b) *Issue, renew, deny, suspend, or revoke licenses under this*
18 *chapter. Licenses shall be valid for a period not to exceed two*
19 *years. Licenses shall be issued within 60 days of receipt of a*
20 *completed application.*

21 (c) *Conduct investigation of persons engaged in massage or*
22 *massage establishments and to inspect the license of practitioners*
23 *for compliance. The refusal of a practitioner to permit inspections*
24 *shall be grounds for revocation, suspension or refusal to issue a*
25 *license pursuant to this chapter. Investigations shall be conducted*
26 *within 90 days.*

27 (d) *Provide a system for adjudication and investigation of*
28 *consumer complaints and seek an injunction through the Attorney*
29 *General's office against any person or massage establishment not*
30 *in compliance with the provisions of this chapter.*

31 (e) *Conduct proceedings under this chapter in accordance with*
32 *Chapter 3.5 (commencing with Section 11340) of Part 1 of*
33 *Division 3 of Title 2 of the Government Code.*

34 (f) *Employ appropriate professional, clerical, or other special*
35 *personnel necessary to carry out its duties subject to Sections 107*
36 *and 154.*

37 (g) *Represent the diversity of disciplines within the profession*
38 *at all times when making decisions, and stay current and informed*
39 *regarding the various branches of massage therapy practice.*

1 (h) *Establish reasonable fees for applications, initial license*
2 *and renewal, fines, and other services provided by the board.*

3 (i) *Maintain a record of all proceedings and make such records*
4 *available to all licensees in an annual report.*

5 (j) *Protection of the public shall be the highest priority for the*
6 *board in exercising its licensing, regulatory, and disciplinary*
7 *functions. Whenever the protection of the public is inconsistent*
8 *with other interests sought to be promoted, the protection of the*
9 *public shall be paramount.*

10 4602.20. (a) *The board shall establish the amount of fees*
11 *assessed to conduct activities of the board, including the amount*
12 *for license application, examination, renewal, and late renewal.*

13 (b) *All fees collected by the board shall be paid into the State*
14 *Treasury and shall be credited to the Massage Therapy Fund which*
15 *is hereby created in the State Treasury. The money in the fund shall*
16 *be available to the board for expenditure for the purposes of this*
17 *chapter only upon appropriation by the Legislature.*

18 (c) *Notwithstanding subdivision (b), all money received and*
19 *credited to the Massage Therapy Fund in the 2005-06 fiscal year*
20 *is hereby appropriated to the board for the purpose of*
21 *implementing this chapter.*

22 4602.30. (a) *The board may, after a hearing, deny, suspend,*
23 *revoke, place on probation a license, inactive license, or limited*
24 *permit.*

25 (b) *As used in this chapter, 'license' includes a license, limited*
26 *permit, or any other authorization to engage in practice regulated*
27 *by this chapter.*

28 (c) *The proceedings under this section shall be conducted in*
29 *accordance with Chapter 5 (commencing with Section 11500) of*
30 *Part 1 of Division 3 of Title 2 of the Government Code, and the*
31 *board shall have all the powers granted therein.*

32 4602.40. (a) *The board may discipline a licensee by any or a*
33 *combination of the following methods:*

34 (1) *Placing the license on probation with terms and conditions.*

35 (2) *Suspending the license and the right to practice massage*
36 *therapy for a period not to exceed one year.*

37 (3) *Revoking the license.*

38 (4) *Suspending or staying the disciplinary order, or portions of*
39 *it, with or without conditions.*

1 (5) *Taking other action as the board, in its discretion, deems*
2 *proper, including the levying of fines.*

3 (b) *The board may issue an initial license on probation, with*
4 *specific terms and conditions, to any applicant who has violated*
5 *any provision of this chapter or the regulations adopted pursuant*
6 *to it, but who has met all other requirements for licensure.*

7 4602.50. *The board may deny or discipline a licensee for any*
8 *of the following:*

9 (a) *Unprofessional conduct, including, but not limited to, the*
10 *following:*

11 (1) *Incompetence or gross negligence in carrying out usual*
12 *massage or massage therapy functions.*

13 (2) *Repeated similar negligent acts in carrying out usual*
14 *massage or massage therapy functions.*

15 (3) *Denial of licensure, revocation, suspension, restriction, or*
16 *any other disciplinary action against a licensee by another state*
17 *or territory of the United States, by any other government agency,*
18 *or by another California health care professional licensing board.*
19 *A certified copy of the decision, order, or judgment shall be*
20 *conclusive evidence of these actions.*

21 (b) *Procuring a license by fraud, misrepresentation, or*
22 *mistake.*

23 (c) *Violating or attempting to violate, directly or indirectly, or*
24 *assisting in or abetting the violation of, or conspiring to violate,*
25 *any provision or term of this chapter or any regulation adopted*
26 *pursuant to this chapter.*

27 (d) *Conviction of a crime or of any offense substantially related*
28 *to the qualifications, functions, or duties of a licensee, in which*
29 *event the record of the conviction shall be conclusive evidence of*
30 *the crime or offense.*

31 (e) *Impersonating an applicant or acting as proxy for an*
32 *applicant in any examination required under this chapter for the*
33 *issuance of a license.*

34 (f) *Impersonating a licensed practitioner, or permitting or*
35 *allowing another unlicensed person to use a license.*

36 (g) *Committing any fraudulent, dishonest, or corrupt act that*
37 *is substantially related to the qualifications, functions, or duties of*
38 *a licensee.*

39 (h) *Committing any act punishable as a sexually related crime,*
40 *if that act is substantially related to the qualifications, functions,*

1 *or duties of a licensee, in which event a certified copy of the record*
2 *of conviction shall be conclusive evidence thereof.*

3 *4602.60. The board shall retain jurisdiction to proceed with*
4 *any investigation, action or disciplinary proceeding against a*
5 *license, or to render a decision suspending or revoking a license,*
6 *regardless of the expiration, lapse, or suspension of the license by*
7 *operation of law, by order or decision of the board or a court of law,*
8 *or by the voluntary surrender of a license by the licensee.*

9 *4602.70. If a license is suspended, the holder may not practice*
10 *massage therapy during the term of suspension. Upon the*
11 *expiration of the term of suspension, the license shall be reinstated*
12 *and the holder entitled to resume practice under any remaining*
13 *terms of the discipline, unless it is established to the satisfaction*
14 *of the board that the holder of the license practiced in this state*
15 *during the term of suspension. In this event, the board may, after*
16 *a hearing on this issue alone, revoke the license.*

17 *4603. It shall be unlawful to advertise the practice of massage*
18 *or massage therapy using the term massage or other term that*
19 *implies massage without holding a current, valid license issued by*
20 *the board. It shall also be unlawful for any licensee to advertise in*
21 *any public publication or communication without including in the*
22 *advertisement the license number and title of the massage*
23 *therapist or practitioner.*

24 *4604. (a) Except as provided in Section 4606, it shall be*
25 *unlawful for any person to hold himself or herself out as a massage*
26 *practitioner, bodywork practitioner, massage and bodywork*
27 *practitioner, massage therapist, bodywork therapist, or massage*
28 *and bodywork therapist or any titles or initials with the intent to*
29 *represent that the person practices or is authorized to practice*
30 *massage or massage therapy, or to practice massage or massage*
31 *therapy, unless that person holds a current valid license issued in*
32 *accordance with the provisions of this chapter.*

33 *(b) In order to obtain a license as a massage practitioner,*
34 *applicants shall provide the board with satisfactory evidence of all*
35 *of the following:*

36 *(1) The applicant is 18 years of age or older.*

37 *(2) The applicant has successfully completed the curricula in*
38 *massage and related subjects as determined by the board, of one*
39 *or more registered or approved massage schools totaling a*

1 minimum of 250 hours. Education must be obtained in a minimum
2 of 100 hour increments.

3 (3) All required fees have been paid.

4 (c) In order to obtain a license as a massage therapist,
5 applicants shall provide the board with satisfactory evidence of all
6 of the following:

7 (1) The applicant is 18 years of age or older.

8 (2) The applicant satisfies one of the following:

9 (A) The applicant has successfully completed the curricula in
10 massage and related subjects as determined by the board, of one
11 or more registered or approved massage schools totaling a
12 minimum of 500 hours. Education must be obtained in a minimum
13 of 100 hour increments.

14 (B) The applicant has passed a certification examination that
15 has been approved by the board and is based upon a minimum 500
16 hour level of competency.

17 (C) The applicant meets the requirements for obtaining a
18 license as a massage practitioner and the applicant has work
19 experience. As used in this subparagraph, work experience means
20 750 hours engaged in the application of massage, not including
21 any hours of experience counted toward the requirements for
22 obtaining a license as a massage practitioner. The board may
23 combine work experience and education. For that purpose, three
24 hours of education is equivalent to one hour engaged in the
25 application of massage. As used in this subparagraph, education
26 means supervised training in the application of massage and
27 related subjects provided by a registered school or an approved
28 massage school.

29 (D) The applicant holds a current and valid registration,
30 certification, or license from any other state whose licensure
31 requirements meet or exceed those defined within this chapter.

32 (3) All required fees have been paid.

33 (d) An applicant applying for a license as a massage therapist
34 or massage practitioner shall file with the board a written
35 application provided by the board, showing to the satisfaction of
36 the board that he or she meets all of the following requirements:

37 (1) That the applicant has not committed acts or crimes
38 constituting grounds for denial of a license under Section 480.

1 (2) That the applicant has successfully completed the academic
2 requirements of an educational program in massage and related
3 subjects that is registered or approved, as defined in Section 4601.

4 (e) Any person who violates subdivision (a) is guilty of a
5 misdemeanor, and upon conviction thereof shall be punished by a
6 fine of not more than five thousand dollars (\$5,000), or by
7 imprisonment of not more than one year in a county jail, or by both
8 that fine and imprisonment.

9 (f) The board shall issue a license to any applicant who meets
10 the requirements of this chapter, including the payment of the
11 prescribed licensure fee, and who meets any other requirement in
12 accordance with applicable state law.

13 (g) Any license issued under this chapter shall be subject to
14 renewal as prescribed by the board and shall expire unless renewed
15 in that manner. The board may provide for the late renewal of a
16 license.

17 (h) Upon a written request, the board may grant inactive status
18 to a massage practitioner or massage therapist who is in good
19 standing, who meets the requirements of this section.

20 4604.10. (a) The board may grant a massage practitioner
21 license to any person who applies on or before January 1, 2007,
22 with evidence of one of the following:

23 (1) A current valid massage permit or license from a California
24 city or county.

25 (2) Practice of at least 100 hours within the previous 18
26 months. Proof of practice shall include one of the following:

27 (A) A W2 form or employer's affidavit containing the dates of
28 the applicant's employment.

29 (B) Tax returns indicating self-employment as a massage
30 practitioner or massage therapist or any other title that may
31 demonstrate experience in the field of massage.

32 (b) After reviewing the information submitted under
33 subdivision (a), the board may require additional information
34 necessary to enable it to determine whether to grant a license
35 under this section.

36 4604.20. (a) Massage practitioners and massage therapists
37 shall show proof of completion of a minimum of 24 hours of
38 approved continuing education in massage and related subjects as
39 a condition of renewal of a license. A maximum of 12 hours may
40 be carried over from the previous licensing period.

1 (b) The board may approve continuing education providers.
2 Registered or approved schools, as defined in subdivisions (g) and
3 (h) of Section 4601 shall be approved as providers of continuing
4 education, as are courses approved by the Board of Registered
5 Nursing (BRN) or the Category A courses approved by the
6 National Certification Board for Therapeutic Massage and
7 Bodywork (NCBTMB).

8 4605. Initial license and renewal fees shall be established by
9 the board in an amount that does not exceed one hundred dollars
10 (\$100) per year. The board shall establish the following additional
11 fees:

12 (a) An application fee not to exceed one hundred dollars
13 (\$100).

14 (b) A late renewal fee.

15 (c) A fee to recover actual costs to collect fingerprints for
16 criminal history record checks.

17 4606. The following persons are exempted from the provisions
18 of this chapter:

19 (a) Any person licensed, certified, or otherwise recognized in
20 this state by any other law or regulation when that person is
21 engaged in the profession or occupation for which he or she is
22 licensed, certified, or otherwise recognized and who is performing
23 services within their authorized scope of practice and who does not
24 hold himself or herself out to be a massage practitioner or
25 therapist.

26 (b) Students enrolled in a program recognized by the board
27 while completing a clinical requirement or supervised fieldwork
28 experience for graduation, performed under the supervision of a
29 person licensed under this chapter, provided the student does not
30 hold himself or herself out as a licensed massage practitioner or
31 massage therapist and does not receive compensation for
32 massage.

33 (c) Individuals duly licensed, registered, or certified in another
34 state or a foreign country when teaching a course related to
35 massage therapy, or to consult with a person licensed under this
36 chapter.

37 (d) Individuals giving massage to members of his or her
38 immediate family.

39 (e) Individuals who restrict their manipulation of the soft
40 tissues of the human body to the hands, feet or ears and do not hold

1 *themselves out to be massage practitioners or therapists or do*
2 *massage or massage therapy.*

3 *(f) Individuals using methods which involve only techniques*
4 *which are specifically intended to affect the human energy fields*
5 *or systems, including, but not limited to, Polarity Therapy, Reiki,*
6 *Touch for Health or Jin Shin Do, in which their services are not*
7 *designated or implied to be massage or massage therapy.*

8 *(g) Individuals who use touch, words and directed movement to*
9 *deepen awareness of existing patterns of movement in the body as*
10 *well as to suggest new possibilities of movement while engaged in*
11 *the scope of practice of a profession with established standards*
12 *and ethics, provided that their services are not designated or*
13 *implied to be massage or massage therapy. These practices*
14 *include, but are not limited to, the Feldenkrais Method of Somatic*
15 *Education, the Trager Approach to Movement Education, and*
16 *Body-Mind Centering.*

17 *(h) Any individuals performing massage therapy services in the*
18 *state, if those services are performed for no more than 45 days in*
19 *a calendar year in association with a massage practitioner or*
20 *massage therapist licensed under this chapter or other licensing*
21 *laws, and if one of the following conditions is satisfied:*

22 *(1) The individual is licensed under the laws of another state*
23 *which the board determines has licensure requirements at least as*
24 *stringent as the requirements of this chapter.*

25 *(2) Individuals incidentally in this state to provide service as*
26 *part of an emergency response team working in conjunction with*
27 *disaster relief officials.*

28 *(3) The individual provides massage therapy exclusively to*
29 *members of an athletic team or teams while such team is*
30 *temporarily in the state.*

31 *4607. (a) A city, county, or other political jurisdiction within*
32 *the state may not enact an ordinance that regulates the practice of*
33 *massage, as defined in this chapter, by an individual who is*
34 *licensed under this chapter. No provision of any ordinance enacted*
35 *by a city, county, or other political jurisdiction that is in effect*
36 *before the effective date of this chapter, and that relates to the*
37 *practice of massage, may be enforced against a person who is*
38 *issued a license by the board under this chapter. This chapter shall*
39 *preempt any local ordinance regulating massage.*

1 (b) Nothing in this chapter precludes a local government
2 jurisdiction from licensing over persons and businesses who do not
3 meet the requirements of this chapter.

4 4608. (a) The board shall submit fingerprint images and
5 related information to the Department of Justice of applicants for
6 licensure for the purpose of obtaining information as to the
7 existence and nature of a record of state and federal level
8 convictions and state and federal level arrests for which the
9 Department of Justice establishes that the applicant was released
10 on bail or on his or her own recognizance pending trial. Requests
11 for federal level criminal offender record information received by
12 the Department of Justice pursuant to this section shall be
13 forwarded to the Federal Bureau of Investigation by the
14 Department of Justice.

15 (b) Pursuant to paragraph (1) of subdivision (p) of Section
16 11105 of the Penal Code, the Department of Justice shall provide
17 the following information to the board:

18 (1) Every conviction rendered against the applicant.

19 (2) Every arrest for an offense for which the applicant is
20 presently awaiting trial, whether the applicant is incarcerated or
21 has been released on bail or on his or her own recognizance
22 pending trial.

23 (c) The Department of Justice shall charge a fee sufficient to
24 cover the cost of processing the request for state and federal level
25 criminal offender record information.

26 (d) Fingerprint images and related information submitted
27 pursuant to this section include fingerprint images and related
28 information transmitted electronically.

29 (e) The board shall request subsequent arrest notification
30 service from the Department of Justice, as provided under Section
31 11105.2 of the Penal Code, for all applicants for licensure for
32 which fingerprint images and related information are submitted to
33 conduct a search for state and federal level criminal offender
34 record information.

35 4609. If any provision of this chapter, or the application
36 thereof to any person or circumstance, is held invalid, that
37 invalidity shall not affect other provisions or applications of this
38 chapter which can be given effect without the invalid provision or
39 application, and to this end, the provisions of this chapter are
40 declared to be severable.

1 *SEC. 3. Chapter 6 (commencing with Section 51030) of Part*
2 *1 of Division 1 of Title 5 of the Government Code is repealed.*

3 *SEC. 4. No reimbursement is required by this act pursuant to*
4 *Section 6 of Article XIII B of the California Constitution because*
5 *the only costs that may be incurred by a local agency or school*
6 *district will be incurred because this act creates a new crime or*
7 *infraction, eliminates a crime or infraction, or changes the penalty*
8 *for a crime or infraction, within the meaning of Section 17556 of*
9 *the Government Code, or changes the definition of a crime within*
10 *the meaning of Section 6 of Article XIII B of the California*
11 *Constitution.*

